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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR CHANGE OF APPROPRIATION WATER)	FINAL ORDER
RIGHTS NOS. 101960-41S AND 101967-41S)	
BY KEITH AND ALICE ROYSTON)	

* * * * *

On May 11, 1989, a Proposal for Decision was issued in the captioned matter. On July 18, 1989, exceptions thereto were timely filed by Applicants. On August 17, 1989, responses to said exceptions were filed by Objectors. The exceptions are addressed below.

(1) Exclusion of Exhibit OB-1 was proper. Relevance was not established.

(2) Standing to object is a matter noncertifiable. The provision cited by Applicant does not authorize certification of the issue of standing either expressly or impliedly. Although whether the party has a water right on which to base an objection is certifiable at the discretion of the Department, the issue of whether an Objector has standing itself (which may be recognized even if the Objector does not have a water right, see § 85-2-308) is decided by the Department. The decision is appealable to District Court.

Whether there is unappropriated water in a source is not a certifiable issue, as it is not an adjudication issue, and as such is not within the jurisdiction of the Water Court. The Water Court was created to decide which claims are valid and to

CASE # 101960

what extent, and it properly can determine whether claims certified to it are valid and to what extent. The Department is expressly granted the authority to decide whether there is unappropriated water in the source. Section 85-2-311, MCA.

Applicants attempt to read into the certification provision a grant of Water Court authority to decide whether there is unappropriated water in a source tortures the provision in the extreme. Determining whether there is unappropriated water in the source is not simply a matter of deciding claimed and/or decreed amounts in a basin. Rather, many additional facts must be considered, e.g., amount of precipitation in the source, the use and reuse of waters in the source, the fact that not all water rights are exercised simultaneously or even every year, etc. Nowhere in the Water Use Act is there any indication that it is the purpose of the Water Court to make these latter determinations; rather, the Department considers the existence and extent of existing water rights on the source, both as claimed and as decreed by the Water Court, along with the other data, and then makes a determination as to the existence of unappropriated water in the source, which determination is appealable in District Court.

(3) Applicants clearly have the burden of proof on all issues specified in § 85-2-311, MCA. Objectors met their burden of production by presenting their junior claims and outlining a plausible theory, based on facts in the record, that Applicants' planned increase in acreage could increase its consumption of

water during the water-short summer months, which increase would ipso facto reduce water available to supply their junior rights. Applicants attempted to meet their burden with a showing that Objectors had no rights that could be affected. However, Objectors' claims stand as prima facie evidence of their content. Applicants wished to be allowed to dispute these claims at the hearing, or to have them certified. The Examiner declined to decide or certify the Objectors' claims. Applicants protest that they were denied due process by such refusal.

The Examiner adequately explained why the Department is reluctant not to fully recognize the Claims of an objector for purposes of the contested case hearing. (Mistaken nonrecognition of an objector's right, and grant of a change authorization based thereon, could irreparably damage objector; while mistaken recognition of that objector's right and denial of a change authorization would maintain the status quo with no actual loss to anyone.) The only viable alternatives are certification, or (as was done here) to decide the case based on the claims as filed. If the change authorization is denied without prejudice, the Applicant can wait until the adjudication of the basin is complete, then, if the Objectors' claims are reduced or nullified, reapply.

Certification can result in a considerable delay in the Department's proceeding with the case. However, only the Applicant moving for certification will be significantly affected by such a delay, as no Change Authorization could issue in the

interim. The effect on the Objectors and Department is simply that of nonresolution of the case. On the other hand, denial of certification results in speedy resolution of all other issues in the case.

Here, as it turned out, a finding that Objectors did not have water rights as claimed was the only way Applicants would have prevailed. However, as Applicants can reapply if the Final Adjudication results in a determination that Objectors' claims are invalid, the only difference certification of the issue would have made is a hastening of the process of resolving that issue, at the expense of a delay in determination of all the other issues. As significant delay in issuance of the Change Authorization (if any is granted) was inevitable either way, it is my opinion that the decision not to certify did not deny Applicants any fundamental rights.

(4) Because, a senior can call for water, junior water rights do not have to be downstream from a senior appropriator in order to be adversely affected by that senior removing more water from the stream than he has historically.

(5) All Findings of Fact contained in the Proposal are based on substantial credible evidence; none are clearly erroneous.

(6) All Conclusions of Law contained in the Proposal are reasoned, correctly reflect the law, and are supported by Findings of Fact.

Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the May 11, 1989 Proposal for Decision and incorporates them herein by reference.

WHEREFORE, based on the record herein, the Department makes the following:


ORDER

That Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Keith and Alice Royston is denied without prejudice.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

Dated this 15 day of November, 1989.



Gary Fritz, Administrator
Department of Natural Resources
and Conservation
Water Resources Division
1520 East 6th Avenue
Helena, Montana 59620-2301

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record

at their address or addresses this 15th day of November, 1989, as follows:

Keith and Alice Royston
Route 1
Moore, MT 59464

Basin Angus Ranch
Hobson, MT 59479

Turner Ranch, Inc.
Rural Route
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Irene LaBare
Irene LaBare
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BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR CHANGE OF APPROPRIATION WATER)	PROPOSAL FOR DECISION
RIGHTS NOS. 101960-41S AND 101967-41S)	
BY KEITH AND ALICE ROYSTON)	

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on September 30, 1988, in Lewistown, Montana.

Applicants appeared by and through Sara Arnott, attorney at law. Ms. Arnott called Keith Royston and expert witness Roger Perkins on behalf of Applicants.

Objectors O'Brien, Inc., Basin Angus Ranch, and Turner Ranch, Inc. appeared by and through John Christensen, attorney at law. Mr. Christensen called witnesses Rick O'Brien, Wayne Stevenson, and Sam Rodriguez, as well as expert witness Merle Nardinger, each of whom testified on Objectors' behalf.

The record closed at the end of the hearing, except for submission of closing briefs, which were filed thereafter.

EXHIBITS

Administrative notice was taken of the Judgment issued April 24, 1987 by the Montana Water Court in Case No. 41S.12, O'Brien, Inc., Objector vs. Keith Royston and Alice Royston, Claimants; of the Department Index to the Temporary Preliminary

CASE # 101960

Decree issued by the Water Court for the Judith Basin Drainage Area; of captioned Statements of Claim Nos. 101960-41S and 101967-41S; and of Statement of Claim No. 14629 by Turner Ranch, Inc.

Applicants introduced four exhibits.

Applicants' Exhibit B, a topographic map of the vicinity of Applicants' present and proposed places of use, was admitted for demonstrative purposes without objection.

Applicants' Exhibit P-1, a series of calculations done by Roger Perkins on September 27, 1988 with attached copies of power demand records for Applicants' pump (1979 - 1988), was admitted over objection that recommendations made therein should be accompanied by a motion to amend the captioned Application.

Applicants' Exhibit P-2, a topographic map of the vicinity of Applicants' present and proposed places of use, with Mylar overlay, was admitted without objection.

Applicants' Exhibit OB-1, a collection of photocopies of documents regarding Permit to Appropriate Water No. 13705 granted to Walter O'Brien and Inez O'Brien, was objected to as irrelevant. In response, Applicants maintained that the collection was relevant to an assertion made by the Objectors, which was interpreted by the Applicants as an assertion that the irrigation method must be optimally efficient. However, although Objectors did allege that the soils in the area were such that Applicants' plan to bank water in the spring was

futile, they did not aver that the irrigation method need be optimally efficient.

A review of the proposed exhibit shows that it would at best establish only that Objector O'Brien received a Permit to Appropriate Water for sprinkler irrigation of soils "not recommended for sprinkler irrigation" by the Department. Therefore, relevance was not established. Accordingly, admission of the exhibit is denied.

Objectors offered no exhibits.

Objectors moved to have certain documentation (Applicant's January 22, 1988 Response to Objections of Basin Angus Ranch and Turner, with appendices and cover letter of same date, together with letter to Alan Kuser dated April 4, 1988) stricken from the Department file, alleging Objectors had not had the opportunity to view same prior to the hearing. There was no objection to the motion, and the documents were stricken. The documentation remaining in the Department file was not objected to and thus is properly before the Examiner.

PRELIMINARY MATTERS

I. At the hearing, Applicants requested certification of the following issues to the district court pursuant to §85-2-309(2), MCA: (1) whether there was sufficient unappropriated water in Ross Fork Creek to justify the issuance to Objector O'Brien of Permit to Appropriate Water No. 13705-s41S; and (2) whether a person who has an invalid water right or an unused

right has standing to object in this proceeding. However, to merit certification under said statute, the issue to be certified must involve the adjudication of water rights at issue in the hearing. Neither issue raised by Applicants involves adjudication of these rights; rather, both issues pertain to administrative decisions over which the Department has exclusive original jurisdiction. Therefore, Applicants' request was denied.

II. The Examiner granted Objectors' motion in limine to disallow evidence regarding Applicants' challenge to the validity of the Turner and Basin Angus Claims, as Department policy is to regard Statements of Claim of Existing Water Rights of Objectors as proof of their content (until issuance of the final decree or unless the Claim is certified to, and altered by, the Water Court) for purposes of administrative determination of adverse effect. See §85-2-227, MCA. Applicants subsequently moved to be allowed to place materials allegedly showing the invalidity of said Objectors' water rights in the record for possible use by an appellate court, if this decision is appealed. However, the Examiner believes the appropriate remedy, if an appellate court should reverse said Department policy, would be remand for receipt of evidence on the issue. The motion is therefore denied.¹

¹ It should be noted that Applicants' motion was denominated "an offer of proof". An offer of proof is a detailed explanation of the evidence sought to be introduced, placed on the record so that the trier of fact and appellate court are made aware of the nature of the evidence excluded. The

FINDINGS OF FACT

1. Section 85-2-402, MCA, provides that "[an] appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department. . .".

2. Both captioned Applications were duly filed on June 22, 1987. Amendments to both Applications were filed on October 21, 1987.

3. The pertinent facts of the amended Applications were published in the Judith Basin Press, a newspaper of general circulation in the area of the source, on December 17, 1987. Timely objections were received from O'Brien, Inc., Basin Angus Ranch, and Turner Ranch, Inc.

4. Statement of Claim of Existing Water Right No. 101960-41S claims 1000 miner's inches up to 350 acre-feet per annum of water from Ross Fork Creek diverted and used from April 1 to November 1, inclusive, each year at a point located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, Township 14 North, Range 15 East, for irrigation of 190 acres located in Sections 25 and 26 of said Township and Range, with a claimed priority date of June 28, 1895. On April 24, 1987, a Judgment (Water Court Docket No. 41S.12) was entered in the Water Court modifying said claim as follows: the priority date was changed to July 1, 1951; the claimed flow rate was reduced to 750 gpm; and claimed total acres

nature of the proffered evidence was made clear on the record in the lengthy discussion regarding its exclusion; therefore, an offer is already of record.

irrigated were reduced to 32 acres in the SE $\frac{1}{4}$ of Section 26, Township 14 North, Range 15 East (hereafter, said 32 acres will be referred to as "the Baird place").

5. Statement of Claim of Existing Water Right No.

101967-41S claims 250 miner's inches up to 352 acre-feet per annum of water from Ross Fork Creek diverted and used from April 1 to November 1, inclusive, each year at a point located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, Township 13 North, Range 15 East, for irrigation of 200 acres located in Sections 1 and 2 of said Township and Range, with a priority date of August 26, 1903. On April 24, 1987, a Judgment (Water Court Docket No. 41S.12) was entered in the Water Court modifying said claim as follows: the claimed flow rate was reduced to 500 gpm; and claimed total acres irrigated were reduced to 54 acres in the SW $\frac{1}{4}$ of Section 1, Township 13 North, Range 15 East (hereafter, said 54 acres will be referred to as "the home place").

6. Applicants wish to change claimed Water Right No.

101960-41S (as decreed) as follows: to change the place of use to 58.3 acres located in the E $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26 and 29.2 acres located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, all in Township 14 North, Range 15 East. The new place of use would thus total 87.5 acres. That portion of the old place of use not included in the description of the new place of use would be removed from production.

7. Applicants wish to change claimed Water Right No.

101967-41S (as decreed) as follows: to change the place of use

to 8.1 acres located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, 6.3 acres located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, 105.4 acres located in the NW $\frac{1}{4}$ of Section 1, and 58.9 acres located in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1, all in Township 13 North, Range 15 East. The new place of use would thus total 178.5 acres. That portion of the old place of use not included in the description of the new place of use would be removed from production.

8. Department records show Objectors possess the following water rights listing Ross Fork Creek as the source. Objector Basin Angus Ranch: Claimed Existing Irrigation Water Right No. 101528; Objector O'Brien, Inc.: Claimed Existing Irrigation Water Right No. 13340 and Permit to Appropriate No. 13705; Objector Turner Ranch, Inc.: Claimed Existing Stockwater Rights Nos. 14588, 14589, 14590, 14593, 14594, 14595, 14596, 14597, 14599, 14601, 14602, 14603, Claimed Existing Irrigation Water Rights Nos. 14623, 14624, 14625, 14627, 14628, 14629, 14630, and Permit to Appropriate No. 3641.

9. Objectors object to Applicant's proposed changes alleging that the proposed expansion of irrigated acreage would result in greater depletion of Ross Fork Creek than historically occurred pursuant to the exercise of Applicants' original water rights, to the detriment of Objectors' junior appropriations.

10. In order to prevent the adverse effect alleged, Applicants propose the following water management plan. Applicants would "bank" (store) water in the subsurface soil profile by heavily irrigating the proposed places of use during

periods of high water in Ross Fork Creek. During nonhigh water periods, Applicants would limit their diversions to the flow and volume historically consumptively used through flood irrigation of the original places of use. (Testimony of Royston, Perkins.)

11. High water periods occur yearly in Ross Fork Creek, and are of variable, but generally short, duration. "High water" was defined for the record simply as when Ross Fork Creek overtops its banks.

12. Historically, alfalfa has been cultivated by means of flood irrigation on both the home place and the Baird place.

13. In the area of the proposed place of use, the peak consumptive use of alfalfa is .24 acre-inch per acre per day. (Testimony of Roger Perkins). Thus, on the home place (54 acres) the maximum volume of water which could be consumed by alfalfa over a 24-hour period is 1.08 acre-feet. On the Baird place (32 acres), the maximum volume of water which could be consumed by alfalfa over a 24-hour period is 0.64 acre-feet. (See Applicant's Exhibit P-1.) The per-acre volume consumed annually by alfalfa in this climatic area is not of record (for either an average or a dry year).

14. The rate of consumption for 1 acre of alfalfa plants in this climatic area is about .0101 cfs. (See Applicants' Exhibit P-1.) Thus, on the home place, approximately .55 cfs (247 gpm) would actually be consumed by alfalfa plants during periods of peak demand; on the Baird place approximately .32 cfs (144 gpm) would actually be consumed by the plants during periods

of peak demand. Theoretically, assuming an application efficiency of 35% (65% of the diverted flow was not used by the plants), the home place historically would have required 1.56 cfs (700 gpm) for flood irrigation during periods of peak demand and, similarly, the Baird place should have required .92 cfs (413 gpm) during such periods. However, because of the gravelly nature of the soils on the Baird place, an additional .74 cfs would have been required there. Thus, a total of 1.66 cfs (745 gpm) would have been required to irrigate the Baird place during periods of peak demand.² (Applicants' Exhibit P-1.) The discrepancy between the flow rate decreed for the home place (500 gpm), and the 700 gpm theoretically derived, may be due to a greater irrigation efficiency of the home place than theorized.

15. Some portion of water diverted from Ross Fork Creek, but not consumed by the plants, would have evaporated or deep percolated; however, due to the proximity of the original places of use and Ross Fork Creek, most of the unconsumed water would have quickly returned to the Creek, either on the surface or via subsurface routes. (Testimony of Rodriguez, recognized technical facts.) The record does not show the relative percentages of water diverted but unconsumed by the crop which

² This additional flow would presumably have gone toward replacing water lost to the subsurface profile due to larger percolation loss; it does not reflect a greater rate of uptake by the plants. Thus, the actual rate of consumption by 32 acres of alfalfa plants would remain .32 cfs, regardless of increased rate of diversion.

evaporated; or which returned to Ross Fork Creek; or which was lost to the Creek through deep percolation or otherwise.

16. The sprinkler system (presently in place) which would irrigate the proposed place of use under Application for Change of Appropriation Water Right No. 101967 is a ten tower system designed to irrigate 214 acres, delivering 700-800 gpm at 70 psi or, with the endgun removed, to irrigate 207 acres, delivering about 700 gpm. The sprinkler system (presently in place) which would irrigate the proposed place of use under Application for Change of Appropriation Water Right No. 101960 is a seven tower system designed to deliver 700 gpm to 88 acres at 80 psi.

(Testimony of Perkins.)

17. Royston testified that if he could not obtain the full flow rates for which the sprinkler systems were designed, he could operate them at lesser flow rates by "nozzling down" and cutting back the pump. However, the record does not indicate how these systems could be operated at design flow rates during high water, then modified to be operated with substantially less flow later in each season. Further, although the systems could be nozzled down to accommodate lower flows, there is a minimum flow below which water cannot be effectively applied even with such adjustments. (Recognized technical fact.) These threshold flows are not of record, and cannot be determined based on this record.

18. There will be significantly less immediate return flow to the source resulting from sprinkler irrigation of the new

places of use proposed hereunder, than there was from flood irrigation of the decreed places of use. (Testimony of Perkins, Royston.) The record does not indicate how much immediate return flow there would be.

Royston asserted that there would be more delayed return flow resulting from the sprinkler irrigation; however, how much there would be and when it would reenter the Creek were not established.

PROPOSED CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled, therefore, the matter was properly before the Hearing Examiner.

2. The Department has jurisdiction over the subject matter herein, and the parties hereto.

3. For purposes hereof, the captioned water rights are recognized as existing to the extent defined by the Water Court in its Judgment of April 24, 1987. See Findings of Fact 4 and 5.

4. The Department must issue a Change Authorization if the Applicant proves by substantial credible evidence that the following criteria, set forth in § 85-2-402(2), MCA, are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

5. The proposed use of water, irrigation, is a beneficial use. §85-2-102(2), MCA.

6. Applicants did not dispute the allegation that an increase in the burden on the source during nonhigh water periods would adversely affect junior users such as the Objectors by depriving them of water they otherwise could have obtained, but maintain that the changes proposed will not increase the burden on the source during such periods over the burden historically caused by the exercise of the captioned water rights. Thus, providing the change proposed by Applicants does not increase the burden on the source during periods other than high water, it may be concluded that there will be no adverse effect to prior appropriators, no other cause of adverse effect having been alleged.

Analysis of potential changes in the burden on the source due to the proposed changes in Applicants' appropriation water rights must begin with consideration of the burden which that right historically placed on the source. The burden on the source is the depletion of the source due to the exercise of a water right, and is calculated both in terms of total annual depletion and of maximum instantaneous depletion. Instantaneous depletion equals the amount of water diverted less the amount returned during the same time interval, and is defined in terms of flow. Total annual depletion is the total volume of water diverted less the total volume returned in a year's time.

7. The maximum instantaneous depletion of the source is the rate of diversion minus the rate of return flow. Where actual rate of return flow is unknown, maximum instantaneous depletion may be estimated using a theoretical maximum rate of consumption.³ The theoretical maximum rate of consumption may in turn be derived from the theoretical maximum daily consumption by volume. See Findings of Fact 13, 14.

The evidence here given shows that the maximum volume of water consumed by the alfalfa plants (and hence not returned to the source) was .24 acre-inches per acre per day, i.e., 1.08 acre-feet per day on the home place, and .64 acre-feet per day on the Baird place. What additional volume of water may have been consumed (and thus lost to the source) in conveying the water to the place of use, or because of evaporation, weeds, or other application inefficiencies, is unknown. See Finding of Fact 15. Hence, the best estimate of historic consumption which may be derived based on this record is the volume consumed by the crop.⁴ Therefore, the maximum recognizable historic daily depletion of the source by volume due to irrigation of the home place equals 1.08 acre-feet per day; and the maximum historic depletion of the source by volume due to irrigation of the Baird

³ This estimate assumes a full soil profile at the beginning of the period of maximum consumptive use.

⁴ An overestimate of historic source depletion would result in adverse effect to the Objectors. Therefore, the Examiner will recognize only such consumption as is proven and quantified by the Applicants.

place equals 0.64 acre-feet per day.⁵ 1.08 acre-feet per day would be supplied by a continuous flow of .55 cfs (247 gpm); 0.64 acre-feet per day would be supplied by a continuous flow of .32 cfs (144 gpm). Hence, it is hereby concluded that said flow rates represent the maximum historic instantaneous depletion of the source due to each captioned appropriation.

The rate of return flow from the new places of use (if there is any significant return flow) has not been quantified. See Finding of Fact 18. Therefore, diversion under the Change at rates greater than the above-said flow rates could result in greater instantaneous depletion than the estimated maximum historic instantaneous depletion. Such an increased burden on the source would, during nonhigh water periods, adversely affect prior appropriators by depriving them of needed flow. Therefore, any Authorization granted would have to be conditioned to prohibit diversion at rates greater than said .55 cfs under Statement of Claim No. 101967-41S, or .32 cfs under Statement of Claim No. 101960-41S, during periods of nonhigh water.

8. Regarding total annual source depletion, the record does not contain sufficient evidence to determine the volume annually consumed at the historic places of use. However, as the new places of use will generate significantly less return flow than the old, the total volume annually diverted for use at the new places of use must not exceed the volume annually consumed at

⁵ Amounts stated in the claims (and decrees) include water diverted but subsequently returned to the source. They are thus not reflective of net source depletion.

the old places of use, or junior appropriators may be adversely affected.

Absent quantification of annual volume historically consumed, no protective condition limiting annual volume diverted can be placed on a Change Authorization, and without such a condition, the evidence of record will not sustain a conclusion of no adverse effect to prior appropriators.

9. The appropriation works have been constructed and have been shown to be adequate when operated at design specifications. Finding of Fact 16. However, as stated in Conclusion of Law 7, during nonhigh water periods the rate of diversion and daily diversion volume must be substantially restricted in order that Objectors not be adversely affected; i.e., no more than 247 gpm could be diverted pursuant to claimed Water Right No. 101967, and no more than 144 gpm could be diverted pursuant to claimed Water Right No. 101960. Whether the systems now in place are adequate to cover the acreage to be irrigated hereunder at such substantially reduced flows cannot be determined based on this record. Finding of Fact 17. Accordingly, given the terms and conditions which must be placed on any Change Authorization granted, it cannot be concluded that the means of diversion and operation of the appropriation works are adequate.

WHEREFORE, based upon the foregoing, the Examiner hereby propounds the following:

PROPOSED ORDER

That Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Keith and Alice Royston be denied without prejudice.

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the proposed order, including the legal land descriptions. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (1520 East 6th Avenue, Helena, Montana 59620-2301); the exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Section 2-4-623, MCA. Parties may file responses to any exception filed by another party within 20 days after service of the exception.

Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed.


Any adversely affected party has the right to present briefs and oral arguments pertaining to its exceptions before the Water Resources Division Administrator. A request for oral argument must be made in writing and be filed with the Hearing Examiner within 20 days after service of the proposal upon the party.

Section 2-4-621(1), MCA. Written requests for an oral argument must specifically set forth the party's exceptions to the proposed decision.

Oral arguments held pursuant to such a request normally will be scheduled for the locale where the contested case hearing in this matter was held. However, the party asking for oral argument may request a different location at the time the exception is filed.

Parties who attend oral argument are not entitled to introduce new evidence, give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will be limited to discussion of the evidence which already is present in the record. Oral argument will be restricted to those issues which the parties have set forth in their written request for oral argument.

Dated this 11 day of May, 1989.


Robert H. Scott, Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6625

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record at their address or addresses this 12th day of May, 1989, as follows:

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